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ABSTRACT

Research about United States Supreme Court rulings, which affect public school policy, has largely disregarded the fact that the Constitution makes no direct reference to education. A method is outlined that may be of use to educational policy makers as they seek to respond to these rulings. The case of "New Jersey v. T.L.O." (469 U.S., 336, 1985) is analyzed to develop the method. In this case, an implicitly held assumption backed the Court's ruling. This assumption is that the public school communities are sufficiently similar to the broader society for the purpose of deciding about the manner and extent that the Constitutional guarantees should apply to the activities of school authorities. It is argued that these constitutional principles, which are relevant to educational issues, articulate intelligibly the manner in which, and extent to which, constitutional guarantees should apply to school authorities. How certain activities for evaluation of teacher and school administrator activities should be established in accordance with constitutional principles is demonstrated. A further development of the method might extend it to other educational cases through investigation of norms of professional ethics and principles of social responsibility. A 13-item list of references is included. An appendix contains four flowcharts that illustrate constitutional arguments. (Author/SLD)

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A METHOD FOR EVALUATING LEGAL DECISIONS WHICH AFFECT EDUCATIONAL POLICIES

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ABSTRACT

Research about United states Supreme Court rulings, which affect public school policy, has largely disregarded the fact that the Constitution makes no direct reference to education. In this paper I intend to outline a method which may be of use to educational policy makers as they seek to respond to these rulings.

As a first step in the development of this method I have analyzed the case of New Jersey v. T.L.O. (469 U.S. 336, 1985). In this case, an implicitly held assumption backed the Court's ruling--namely, that the public school communities are sufficiently similar to the broader society for the purpose of deciding about the manner and extend that the Constitutional guarantees should apply to the activities of school authorities. It is my conviction that those constitutional principles, which are relevant to educational issues, articulate intelligibly the manner in which, and extent to which, constitutional guarantees should apply to school authorities.

By means of philosophical inquiry I demonstrate how certain procedures for the evaluation of teacher and school administrator activities should be established in accordance with constitutional principles.

A further development of this method might extend its applicability to other educational cases through an investigation of norms of professional ethics and principles of social responsibility. I believe that such investigation is essential in judging correctly the activities of any educator.

A METHOD FOR EVALUATING LEGAL DECISIONS WHICH AFFECT EDUCATIONAL POLICIES

Introduction to the Problem

My aim in this paper is to outline a method for evaluating Supreme Court rulings dealing with the constitutionality of actions taken by school authorities. It is shown how this method can be used to clarify and analyze the educational policies and practices recommended by such rulings. As a first step of this methodology, I have studied the New Jersey v. T.L.O. case (469 U.S. 336, 1985) by means of philosophical inquiry about education.

Between 1966 and 1985 the U.S. Supreme Court has decided approximately one hundred twenty-one cases which involved educational disputes. This constitutes three times the number of High Court decisions reached during an entire century before 1966, approximately forty-one between 1859 and 1965. (See Zirkel 1988 for a complete list of educational cases decided by the Supreme Court.)

The increase of the Supreme Court's interest in educational disputes during the period between 1966 and 1985 has raised concerns, revolving around two issues, among a number of educators and other interested parties. The first issue concerns the Court's activism in reviewing these disputes and the second issue addresses the consistency of the educational policies entailed by such rulings. In regard to school discipline, for example, many educators would agree with the following statement:

> For two decades, federal and state courts have unfortunately contributed to educational policy uncertainty on discipline t[h]rough contradictory opinions that exhibit their confusion and lack of either educational or legal certitude about the best course of action regarding school discipline policy. . . . The U.S. Supreme Court has played the major role in creating this confusion as it alternates between Court majorities committed to judicial liberalism or conservatism and to judicial activism or restraintism. (Menacker 1990, 18)

The ongoing debates in the educational community are, of course, something to be expected. The Supreme Court's decisions are of great significance for public educational policies and practices. Furthermore, the range covered by these decisions encompasses important, and still unsettled, educational and social disagreements over a broad variety of issues. These issues include academic freedom, the curriculum content, the separation of the State from the Church, due process procedures, student rights and responsibilities, racial segregation, among others.

The overall pattern emerging from the dispute of educational issues within the courts indicates that the nature of the institutions and the concepts relevant to public education have, been characterized and measured on narrow grounds, in other words, in terms which are typical of legal approaches only. One particularly important example of this trend concerns U.S. Supreme Court decisions of issues relating to searches of students by public school officials. These cases are significant for two reasons: (1) these cases greatly impact the educational policies and practices governing searches of students by public school officials; and (2) the reasoning put forth in these cases has often been warranted by policies and practices characteristic of other state institutions--more specifically, by policies and practices characteristic of civil and criminal authorities.

As is evident from the framer's writing, the Constitution does not contain principles which are concomitant to education. Additionally, the Court's approach does not explain why the duties of the public school official are generally subject to Constitutional strictures and guarantees. Finally, despite the reality that the United States Constitution fails to make any direct references about education and its purposes, this salient fact has been continually overlooked by those who draw educational policies based upon an analysis of Supreme Court rulings.

As a result, the background of the principles of education and of justice against which the Justices' arguments are analyzed and evaluated fails to make provision for the proper connections between constitutional and educational concepts. Thus, education conceptions which the backing standards of the Justices' arguments could disclose remain unclear and often confusing.

Conceptual Framework

In order to answer whether, and if so how, constitutional strictures apply to the activities of public school authorities, one must identify those constitutional principles which are relevant to educational issues. To make this identification, I find that one needs to take the following steps: (1) consider the duties that an educator has by virtue of her position; (2) refer to the standards of conduct which would be appropriate for one acting in the position of the educator; and (3) establish explicit, concrete procedures which are consistent with both the educator's standards and the strictures set out in the Constitution.

I believe that an exploration into these areas can further illuminate concepts that are relevant to the rules which are "internal" to an educator's practice and profession. Internal rules are meant here to be those guides without which the actions an educator would be judged either inadequate under the standards

of educational practice or outside the practice of education altogether.

The outcomes which an institutionalized practice seeks to produce necessarily dictate what is right and obligatory in the profession. Hence, a consideration about the goods of educational practice seems warranted. Such an inquiry could further help researchers create an intelligible statement of the educator's duties. It could also assist them in investigating the rules internal to the professional practice of education.

Methodology

The procedure which I am proposing starts with a technique for analyzing the High Court's arguments as articulated by Maccia (1985). This technique can be implemented by the Toulmin's analysis of legal and ethical reasoning (Toulmin 1984 and Maccia 1985). I expect this analysis to improve understanding of the conceptions of education which are currently held by the Justices. Analyzed in this manner, these conceptions reveal the standards which back the Supreme Court's arguments.

As part of the proposed technique, I have also employed philosophical linguistic analysis in order to examine certain uses of terms about education, as those terms are stated in or extracted from, the U. S. Supreme Court report in the T.L.O. case. Ordinary language analysis helped me in examining the central uses of the education terms made by the Justices in this report.

Maccia examined two cases of educational disputes which were resolved by the U.S. Supreme Court, Pierce v. Society of Sisters (268 U.S. 510, 1925) and Wisconsin v. Yolder (406 U.S. 205, 1972), in order to "elucidate the principles of justice backing the argument associated with decisions regarding the constitutionality of educational policies and practices" (Maccia 1985, 1). Among other findings, Maccia noted that the current bibliography lacks careful explication of such important concepts as "constitutional educational justice" and "the constitutional meaning of 'education'" (Id. 6). He also pointed out that "[a] complete understanding of educational policy [as it emerges from Supreme Court rulings] entails [an investigation of the] philosophical as well as the legal and the scientific connections [and a consideration of] the moral grounds [which back] . . . the sanctioned educational policy and practice" (Id.).

According to Toulmin,

> [r]easoning . . . involves dealing with claims with an eye to their contexts, to competing claims, and to the people who hold them. It calls for the critical evaluation of these ideas by shared standards; a

> readiness to modify claims in response to criticism; and a continuing critical scrutiny both of the claims provisionally accepted and of any new ones that may be put forward subsequently. A "reasoned" judgement is thus a judgement in defense of which adequate and appropriate reasons can be produced (1984, 10).

Given Toulmin's description of reasoning (see Toulmin 1984) and noting that such reasoning composes the threads which are then interwoven to form arguments, his characterization of arguments can be summarized as follows:

1. Arguments intend to raise different issues such as aesthetic, scientific, legal, ethical, etc.

2. They are composed of the claim (conclusion) and of the supportive reason (ground).

3. The connection between the claim and the reason is guaranteed by means of a rule (warrant). This rule to be forced into play presuppose evidence (backing) such a general body of information.

4. Finally, the strength of the argument is expressed through modifiers (qualifiers).

At the end of this paper I have appended the Supreme Court's reasoning in the T.L.O. case (see Appendix). Using Toulmin's approach to legal reasoning, I found that this decision is based on four principal arguments that are warranted by statements relevant to education. Following the State of New Jersey's petition for a review of the T.L.O. case, the opinion of the High Court overrode a number of the State's arguments and relied upon threads of reasoning in which education-related statements functioned in one of two roles: (1) as rebuttals which directly undermined the grounds of the State's argumentation; or (2) as backing used to buttress another set of warrants upon which the decision turned.

A close examination of the present analysis reveals the following important points:

1. Uses by the Supreme Court of the expressions "school authorities," "public school official," "state officer," "educational policies," and "school disciplinary procedures" indicate that the relationship between teachers or administrators and students develops in a fashion analogous to the relationship that has developed between a state officer and a citizen. This leads the reader of such opinions to choose between two very different conceptualizations of the educator. On one hand, it may be understood from

T.L.O. that educators act on behalf of the State merely as public servants, performing assigned duties. On the other hand, educators have long been viewed, with considerable justification, as professionals whose duties are determined by their role within a social institution, i.e., the school as a societal locus for the education.

2. The Supreme Court in T.L.O. initially attempts to present a description of the role that educators are called upon to play when they enforce disciplinary procedures in public schools. Due to what the Court claims is a sound educational environment, new ideas about the educator/student relationship begin to emerge. Discipline now becomes prior to learning. That discipline is linked to learning in a temporal sequence where, discipline comes first. In line with the same reasoning, the relationship between an educator and a student is now shaped by the belief that in all schools it is necessary to establish close supervision of the students first and only then start to educate them.

3. Towards the end of the opinion, the Supreme Court argues that a standard of reasonableness better fits the school environment than the probable cause and warrant requirements which previously governed searches of students. One should keep in mind that, as used here, the term 'school environment' refers to a context which completely satisfies the needs of teachers and administrators for freedom to maintain order and enforce swift and informal disciplinary procedures. As an example, Argument #4 (see Appendix, page IV) makes the Court's position on the warrant requirement rather clear. School officials do not need to obtain a warrant before searching a student who is under their authority. But how is this conclusion logically reconciled with what the Court has found before? How is a shift from the conclusion of the third argument (C3) to the conclusion of the fourth argument (C4) possible? How, in practice, can an educator be clear about the conclusions of Arguments #3 and #4 in a way that ensures consistency with both the law and the practices of the educational profession? (See Appendix, pages III and IV.)

4. There are two statements found in the Court's decision which make the possibility of a transition from C3 to C4 clear. "A search of a child's person or of a closed purse or other bag carried on her person, no less than a similar search carried out on an adult, is undoubtedly a severe violation of subjective

> expectations of privacy." (T.L.O., 469 U.S. 336, 338-339, 1985) and "To receive protection of the Fourth Amendment, an expectation of privacy must be one that society is "prepared to recognize as legitimate" (Id. at 339). Implicitly held in these statements and in many other statements uttered by the Justices, is the assumption that society is prior to the individual. This calls again for considerations about the education profession. To whom is an educator responsible? To the student? To the parent? Moreover, what is the source of the educator's authority? Her client, the family, the school board, or the State? Finally, what is the reproductive role that the school, as a social institution, has? Do we need schools in order to cure social illnesses, serve the community, or educate the individual?

The considerations just noted bear profound and pervasive impacts upon the education profession. As the instant case of T.L.O. illustrates, these considerations can enhance the educator's understanding of how the Court defines such concepts as, "the legitimate expectations of privacy" and "the personal security of the public school student." Only when the educator understands the esoteric definitions attached to these concepts by the law, can the educator formulate rational policies which will satisfy the intellectual and ethical demands of both professions.

Current Problem

The next step in my study is to demonstrate how formal language can be used to analyze some of the Justice's statements, as in the T.L.O. case. This analysis should clarify the relations which have developed among terms as they are used by the High Court to describe educational phenomena, procedures, and objectives. To support a formal language analysis, I have looked for adequate definitions of concepts about education and society. Steiner's (1981) and Hutchins's (1968) theories about liberal education and Dewey's (1938) approach to the social development of the learner will provide the principal guidelines for such definitions. Those definitions will be compared with the definitions which emerge from the Court's opinion or the Justice's comments on the opinion.

Also, an examination of education as a profession should explicate the formal and non-formal aspects justifying the soundness of the Supreme Court's implicit assumption in the T.L.O. case: that "public school communities are sufficiently similar to the broader society for the purpose of deciding about the manner and extent that the Constitutional guarantees should apply to the activities of school authorities." Such an explication may permit extension of the proposed method to the

evaluation of the soundness and educational significance of other implicit assumptions of the Court.

At this time, I would like to note that the analytic framework I have outlined above is intended to provide two contributions to the education profession. First, as an innovative analytic tool that will further enhance the profession's current theoretical understanding. Second, as a promising practical approach to solving a problem that has long confronted public education policy makers, and educators in general: the vagueness that so often characterizes public education policy and that arises from insufficient understanding of how High Court rulings should be applied to everyday school practices.

I believe that the method which I am trying to articulate can make a substantial contribution to the solution of this problem. Utilizing what is, at heart, an interdisciplinary approach (combining knowledge from such diverse disciplines as education, law and philosophy), education professionals should be able to formulate policies which are more consistent with both the aims of the education profession and the requirements of the legal profession.

Further development of this method for investigating norms and principles basic to the correct judgement of any educator's activities promises to extend its applicability to cases involving other educational issues. I believe that a better understanding of the norms of professional ethics and principles of social responsibility is essential to correctly judge an educator's activities and that these norms and principles, in fact, overlap with those which can be observed in the Constitution.

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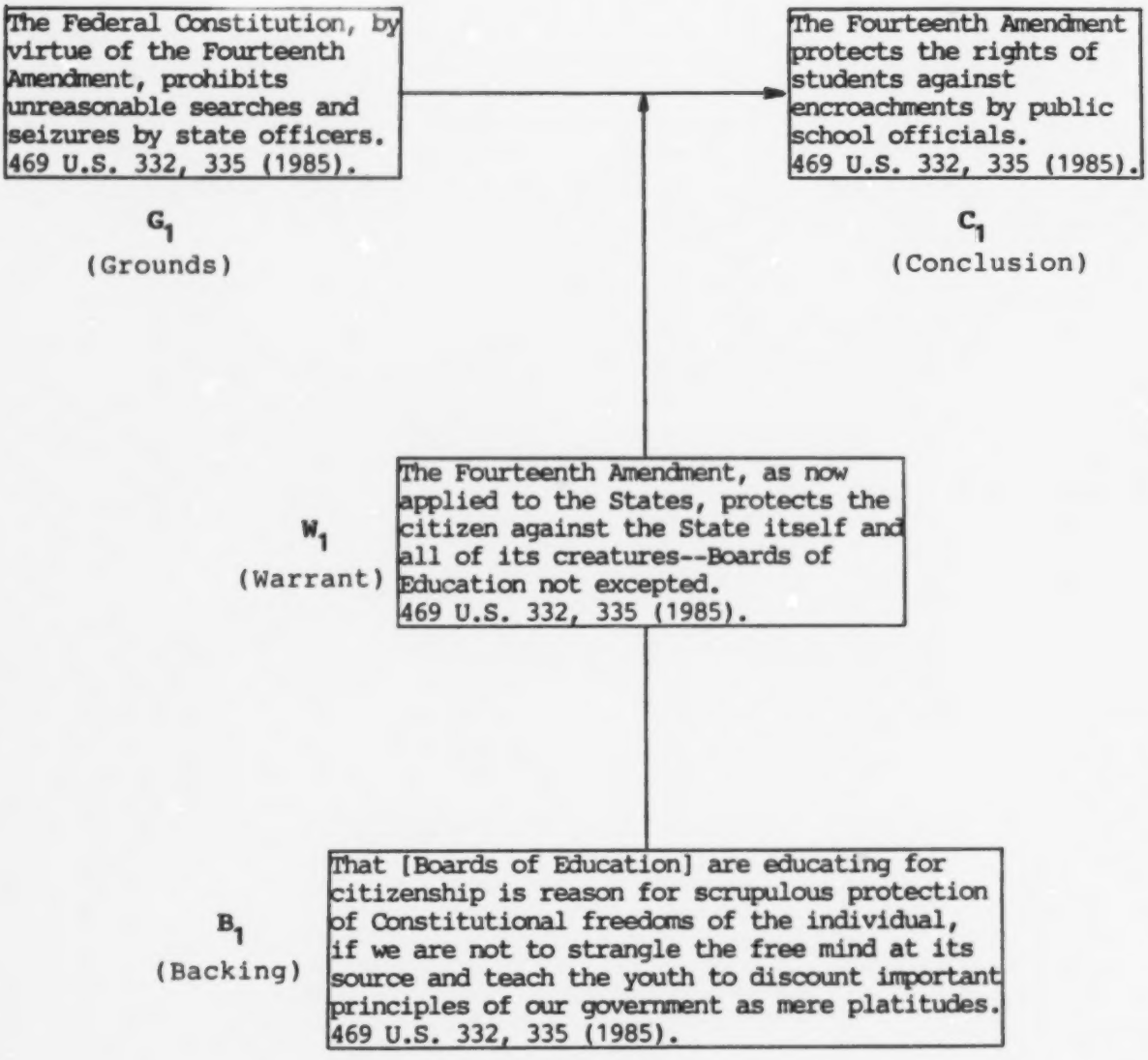
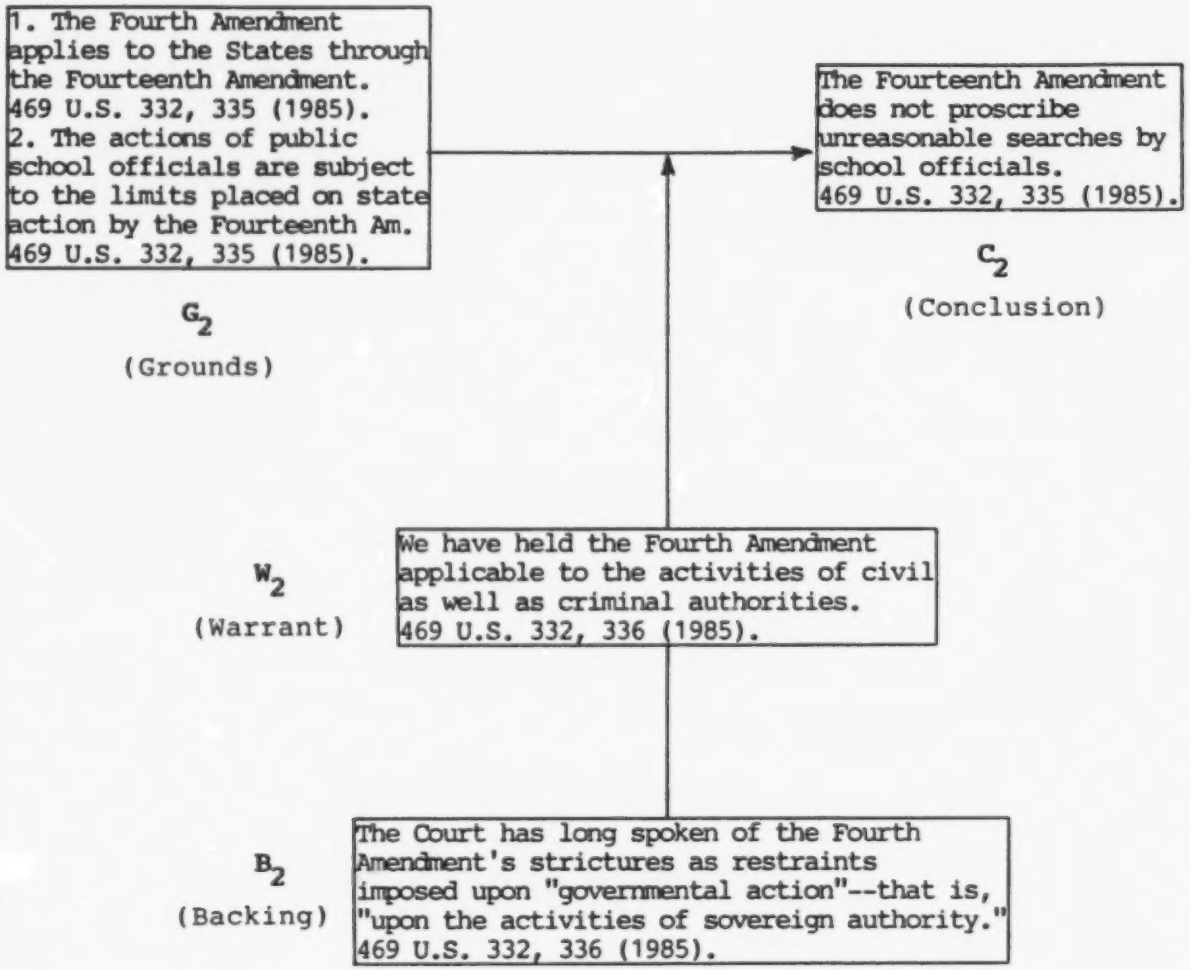
APPENDIX

ARGUMENT #1


The Federal Constitution, by virtue of the Fourteenth Amendment, prohibits unreasonable searches and seizures by state officers. 469 U.S. 332, 335 (1985).
G1
(Grounds)
The Fourteenth Amendment protects the rights of students against encroachments by public school officials. 469 U.S. 332, 335 (1985).
C1
(Conclusion)
W1
(Warrant)
The Fourteenth Amendment, as now applied to the States, protects the citizen against the State itself and all of its creatures--Boards of Education not excepted. 469 U.S. 332, 335 (1985).
B1
(Backing)
That [Boards of Education] are educating for citizenship is reason for scrupulous protection of Constitutional freedoms of the individual, if we are not to strangle the free mind at its source and teach the youth to discount important principles of our government as mere platitudes. 469 U.S. 332, 335 (1985).

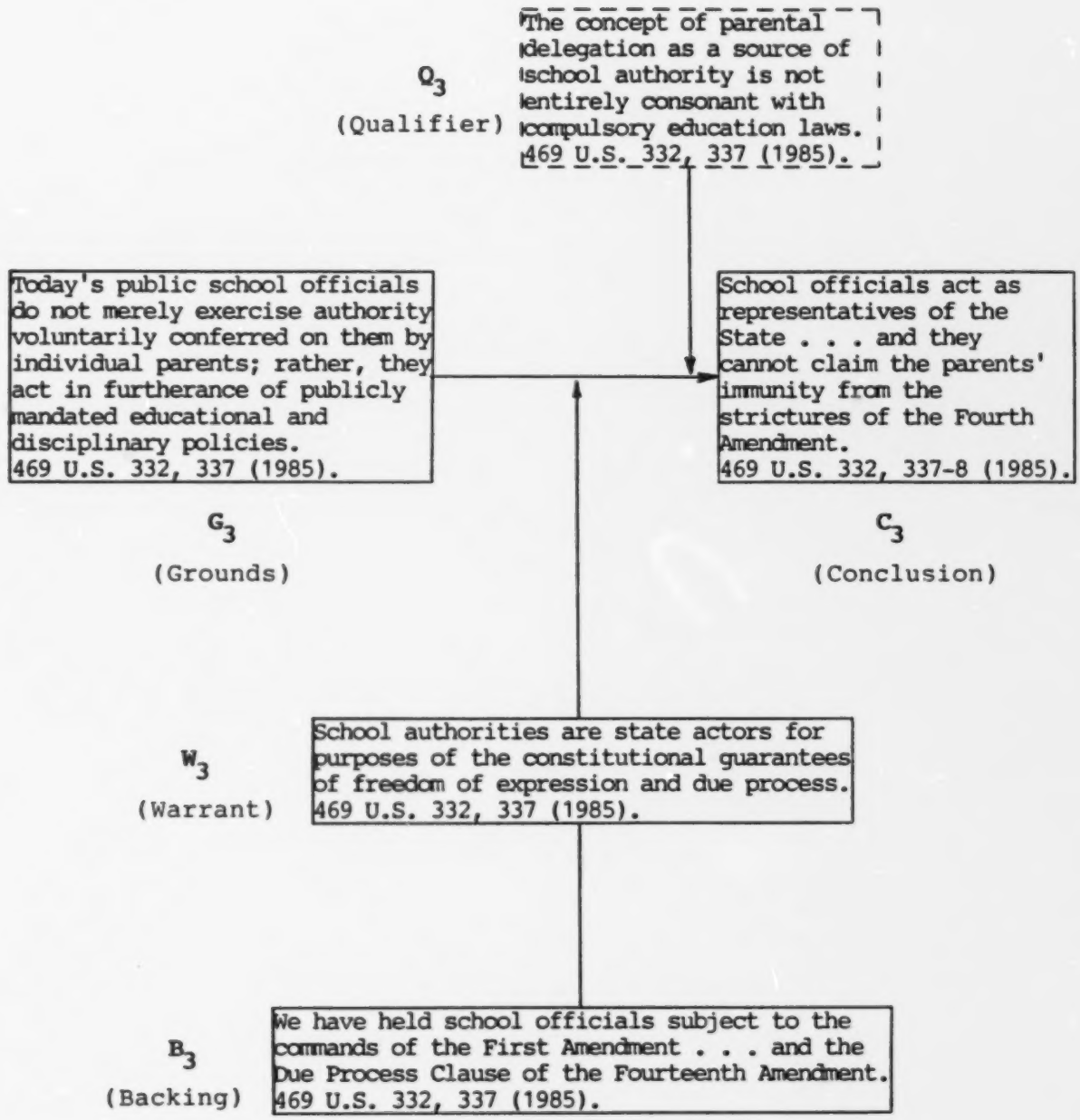
I

ARGUMENT #2


1. The Fourth Amendment applies to the States through the Fourteenth Amendment. 469 U.S. 332, 335 (1985).
2. The actions of public school officials are subject to the limits placed on state action by the Fourteenth Am. 469 U.S. 332, 335 (1985).
G2
(Grounds)
The Fourteenth Amendment does not proscribe unreasonable searches by school officials. 469 U.S. 332, 335 (1985).
C2
(Conclusion)
W2
(Warrant)
We have held the Fourth Amendment applicable to the activities of civil as well as criminal authorities. 469 U.S. 332, 336 (1985).
B2
(Backing)
The Court has long spoken of the Fourth Amendment's strictures as restraints imposed upon "governmental action"--that is, "upon the activities of sovereign authority." 469 U.S. 332, 336 (1985).

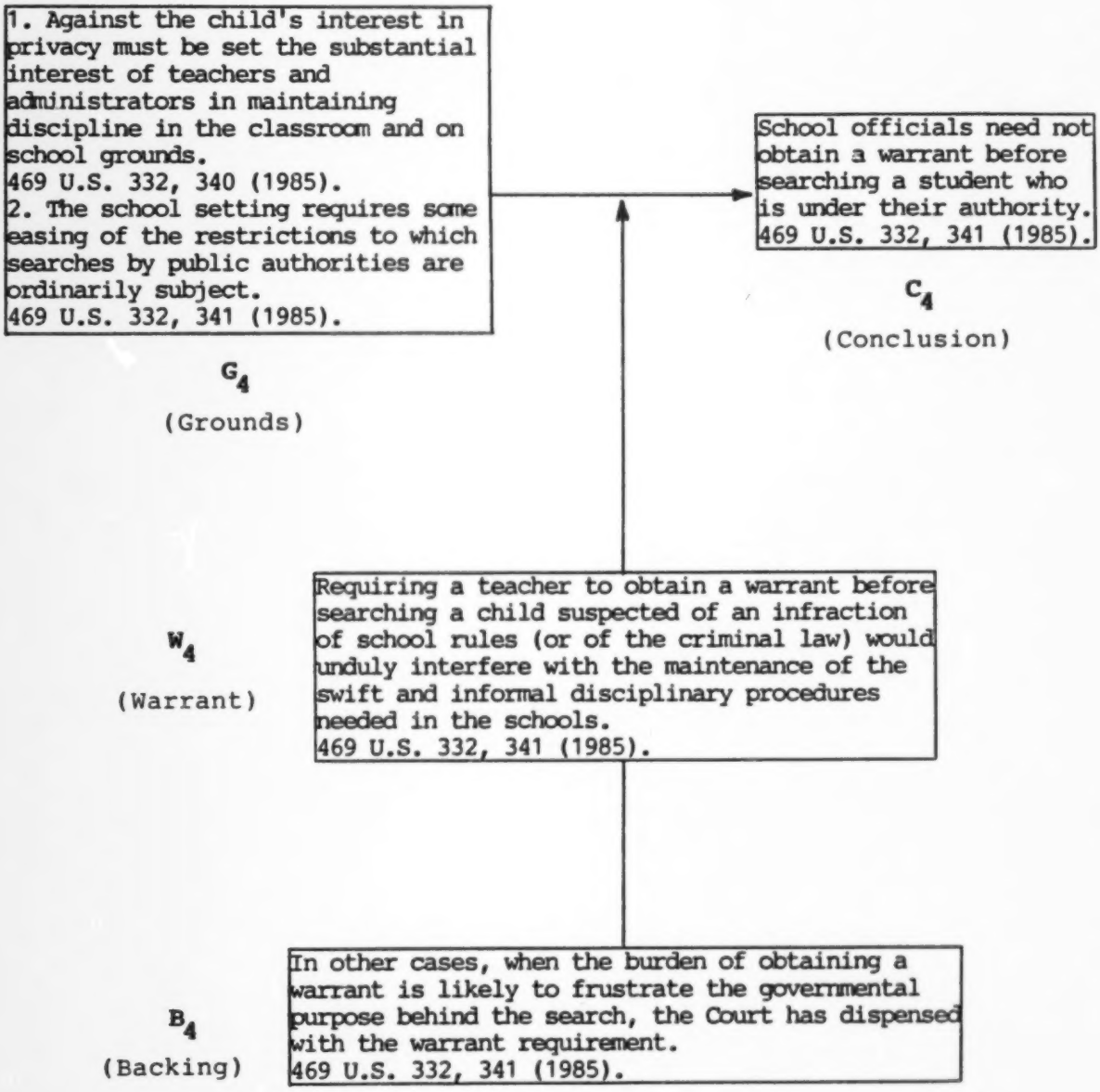
II

ARGUMENT #3


Q_3
(Qualifier)
The concept of parental delegation as a source of school authority is not entirely consonant with compulsory education laws.
469 U.S. 332, 337 (1985).
Today's public school officials do not merely exercise authority voluntarily conferred on them by individual parents; rather, they act in furtherance of publicly mandated educational and disciplinary policies.
469 U.S. 332, 337 (1985).
G_3
(Grounds)
School officials act as representatives of the State . . . and they cannot claim the parents' immunity from the strictures of the Fourth Amendment.
469 U.S. 332, 337-8 (1985).
C_3
(Conclusion)
W_3
(Warrant)
School authorities are state actors for purposes of the constitutional guarantees of freedom of expression and due process.
469 U.S. 332, 337 (1985).
B_3
(Backing)
We have held school officials subject to the commands of the First Amendment . . . and the Due Process Clause of the Fourteenth Amendment.
469 U.S. 332, 337 (1985).

III

ARGUMENT #4


1. Against the child's interest in privacy must be set the substantial interest of teachers and administrators in maintaining discipline in the classroom and on school grounds.
469 U.S. 332, 340 (1985).
2. The school setting requires some easing of the restrictions to which searches by public authorities are ordinarily subject.
469 U.S. 332, 341 (1985).
G4
(Grounds)
School officials need not obtain a warrant before searching a student who is under their authority.
469 U.S. 332, 341 (1985).
C4
(Conclusion)
W4
(Warrant)
Requiring a teacher to obtain a warrant before searching a child suspected of an infraction of school rules (or of the criminal law) would unduly interfere with the maintenance of the swift and informal disciplinary procedures needed in the schools.
469 U.S. 332, 341 (1985).
B4
(Backing)
In other cases, when the burden of obtaining a warrant is likely to frustrate the governmental purpose behind the search, the Court has dispensed with the warrant requirement.
469 U.S. 332, 341 (1985).